

OPINION SUMMARY
MISSOURI COURT OF APPEALS EASTERN DISTRICT

MICHAEL P. PHELAN;)	
MICHAEL PHELAN, TRUSTEE)	
OF THE MICHAEL P. PHELAN)	
REVOCABLE LIVING TRUST DATED)	
MAY 14, 2004; and SEAMLESS)	No. ED104677
INVESTMENTS, LLC,)	
)	
Plaintiffs/Appellants,)	Appeal from the Circuit Court
)	of St. Louis County
v.)	
)	
ERNEST W. ROSENER, JR.;)	Honorable Dale W. Hood
SUMMIT SPRINGS AT WILD)	
HORSE I, LLC; and SUMMIT SPRINGS)	
AT WILD HORSE II, LLC,)	
)	
Defendants/Respondents.)	Filed: February 28, 2017

Michael P. Phelan; Michael Phelan, Trustee of the Michael P. Phelan Revocable Living Trust Dated May 14, 2004; and Seamless Investments, LLC (collectively Appellants) appeal from the trial court's summary judgment against them on their claims for declaratory judgment and to quiet title and in favor of Ernest W. Rosener, Jr.; Summit Springs at Wild Horse I, LLC; and Summit Springs at Wild Horse II, LLC (collectively Respondents) on Respondents' counterclaims for declaratory judgment and to quiet title. The trial court found the Road Maintenance Agreement (RMA) entered into by the parties' predecessor in title, the McPheeters, created the Cliffview Lane easement over the subject properties and granted Respondents' property a right to use said easement.

On appeal, Appellants argue the trial court erred in granting summary judgment in favor of Respondents because the RMA contained no words of grant or conveyance and, even if it did, said grant was ineffective due to merger or because the McPheeters did not reserve a right to use the easement after conveying the property. Alternatively, Appellants contend the trial court erred in entering summary judgment in favor of Respondents because the terms of the RMA are ambiguous and there are genuine issues of material fact.

AFFIRMED.

Division Two Holds: The RMA contains sufficient language of grant or conveyance and constitutes a written agreement to create a private road easement on the subject lands for the benefit of those lands, including Respondents' parcel. The Cliffview Lane easement was not extinguished by merger because the McPheeters severed their title by conveying the property to third-party purchasers. Further, the McPheeters maintained an easement over Cliffview Lane until they sold their last parcel to Respondents' predecessor in title. Appellants' argument there are genuine issues of material fact is not preserved for appeal.

Opinion by: Sherri B. Sullivan, P.J.

Roy L. Richter, J., and Colleen Dolan, J., concur.

Attorneys for Appellants: Thomas J. O'Toole, Jr., Sarah W. Rubenstein, and Conor P. Neusel
Attorneys for Respondents: Dean C. Nichols and James D. Ribaudó

THIS SUMMARY IS NOT PART OF THE OPINION OF THE COURT. IT HAS BEEN PREPARED FOR THE CONVENIENCE OF THE READER AND SHOULD NOT BE QUOTED OR CITED.